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November 18, 2004
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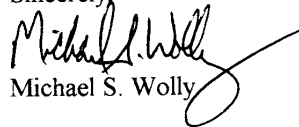
Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Docket No. AB-156 (Sub-No.25X)

Dear Mr. Williams:

Pursuant to the Board's Rules, please find enclosed for filing an original and 10 copies of Motion for Leave to File Statement in Support of Comments of BLET in the above-referenced Docket. We enclose an electronic copy of same on 3.5" disk in WordPerfect format. Thank you.

Sincerely,


Michael S. Wolly

Enclosures
cc w/ encl.: All counsel of record

212575

BEFORE THE SURFACE TRANSPORTATION BOARD

BLET - 3

In the Matter of:

STB Docket No. AB-156 (Sub-No. 25X)

**DELAWARE AND HUDSON RAILWAY COMPANY, INC. -
DISCONTINUANCE OF TRackage RIGHTS - BETWEEN
LANESBORO, PA, AND BUFFALO, NY**



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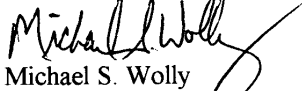
**MOTION FOR LEAVE TO FILE STATEMENT
IN SUPPORT OF COMMENTS OF BLET**

Part of
Public Record

The Brotherhood of Locomotive Engineers and Trainmen, A Division of the Rail Conference of the International Brotherhood of Teamsters ("BLET") requests leave to file the attached Statement of M.D. Twombly in support of BLET's Comments in opposition to the application of Delaware and Hudson Railway Company ("D&H") to discontinue the trackage rights that are the subject of this proceeding. Mr. Twombly is the General Chairmen for BLET General Committee of Adjustment that is responsible for representing the employees of D&H for whom BLET is the exclusive collective bargaining representative. Mr. Twombly, who is also a working locomotive engineer, was unable to have this statement available by the date for filing Comments and BLET counsel was out of town when the statement came in to his office and therefore was not able to present it to the Board before today. No party will be prejudiced by allowing the filing of Mr. Twombly's remarks at this time. The time for the Board to render a decision is two months away.

For these reasons, we request that the Board accept the attached Statement into the record.

Respectfully submitted,

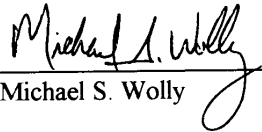


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Attorney for BLET

CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Motion and Statement were served upon all known parties of record by first class mail, postage prepaid, this 18th day of November 2004.


Michael S. Wolly

DECLARATION OF M.D. TWOMBLY

I, M.D. Twombly, declare under penalty of perjury that the following is true and correct:

1. I am General Chairman of the Brotherhood of Locomotive Engineers and Trainmen General Committee of Adjustment representing locomotive engineers employed by the Delaware & Hudson Railway Company. I am personally familiar with the D&H system, as I have represented locomotive engineers in this capacity on the D&H since January 1, 1997.

2. The key issue that is raised by D&H's petition for permission to discontinue its trackage rights in the Southern Tier and transfer those trackage rights to CPR in the Buffalo gateway is the continuance of competition between two viable carriers in this region as contemplated in the Regional Rail Reorganization Act.

3. The Final System Plan of the United States Railway Administration created real, physical competition between two operating Carriers, Conrail and the Delaware & Hudson. If haulage agreements between the parties would have been sufficient to maintain the competitive balance in this region, then the USRA would have required Conrail to enter into haulage agreements with its competition and left it at that. It is apparent that it was not sufficient in the minds of those responsible for the Final System Plan to merely direct the parties to engage in haulage agreements, but it was necessary to have a real physical presence in this region with a viable operating Carrier, D&H.

4. On its face, CPR and NS would lead the Board and the public to believe that this transaction will preserve competition in this region. However, this transaction is designed to mislead the STB into thinking that competition is going to be preserved in the form of a haulage agreement and transfer of D&H's interchange rights to CPR in the Buffalo gateway and that all is well. That is not the case.

5. The Regional Rail Reorganization Act Final System Plan put in place a transferable mechanism that would provide for real and permanent rail competition in the future. This is demonstrated by the fact that D&H was sold to Guilford Transportation Industries with all rights contained therein intact and sold again to CPR with those same rights intact.

6. The proposed transaction is really an instrument to end this competition. Now comes CPR/NS with a proposed transaction that purports to preserve competition in this region with language contained therein designed to mislead the STB into thinking that no harm could possibly come to the competitive balance in this region.

7. Both NS and D&H/CPR assert that the D&H's abandonment of its trackage rights on the Southern Tier in favor of a proposed haulage agreement and the transfer of its

trackage rights to CPR in the Buffalo Gateway between the parties would preserve this competition with the long term advantage of lowering costs and providing for a more efficient rail system. In the long run the opposite would be true. This transaction, if permitted to go forward, would circumvent the intent of the Regional Rail Reorganization Act, Final System Plan and establish in lieu thereof a mechanism designed to extinguish this competitive balance on the Southern Tier and set a precedent in motion for the discontinuance of this competitive balance in those other areas provided for in the Final System Plan, now owned and operated by NS.

8. It is BLET's understanding that the trackage rights to be abandoned by D&H/CPR on the Southern Tier and those other rights described in the Final System Plan are a transferable right to any future owner of the D&H property. Once these rights are abandoned they are gone forever. In addition, the D&H trackage rights to be transferred to CPR in the Buffalo Gateway will no longer be transferable to any future owner. A careful reading of the proposed transaction reveals that there is no provision contained therein that would provide for the guaranteed transfer of the proposed haulage agreement to any future owner of the D&H. Thus, the competitive balance provided for in the Final System Plan would end with the sale of the D&H.

9. CPR representatives have publicly stated in an article in Traffic World Magazine that if this transaction does not provide CPR with the earning levels they require in the near future, they would sell the D&H.

10. Further, if this transaction is permitted to go forward, it would set clear precedent for future transactions just like this and the abandonment of D&H's other trackage rights over NS lines. Similar non-transferable haulage agreements would no doubt be granted based upon this transaction which would not only lead to the total elimination of the competitive balance as intended in the Final System Plan, but would result in the wholesale loss of employment to hundreds of D&H employees system wide.

11. Simply stated, this transaction will lead to total market abuse by eliminating the competition and leaving the region's shippers captive to a single carrier, NS.

12. The Board should examine the proposed discontinuance on a long range basis, evaluating the quid pro quo that NS gains in return for giving trackage rights to CPR between Detroit, Michigan and Chicago, Illinois. It makes little sense that NS would give so great an advantage to CPR in the Detroit/Chicago corridor in return for one haulage train a day on the Southern Tier. CPR is sacrificing the D&H to get what it wants in another arena.

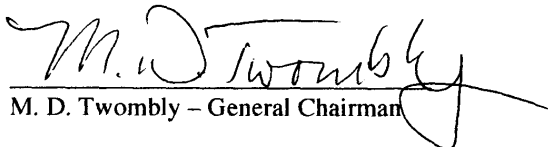
13. Furthermore, the employees of the D&H will be irreparably harmed by this transaction. This transaction provides for the consolidation of the D&H and NS yard operations in Buffalo, NY and Binghamton, NY. The Final System Plan required D&H to acquire former Erie Lackawanna employees from Conrail to operate those trains on the acquired trackage, in the instant case, the Southern Tier. In effect, those employees followed their work to the D&H. Now D&H/CPR and NS want to

eliminate this agreement without regard to the acquired employees. These employees gave up their positions on Conrail to follow this work. Now this work is being given back to NS, which acquired that part of Conrail from which these employees came to D&H.

14. It is the position of the Organization that if this transaction is permitted to go forward, then NS should be required to reacquire those acquired employees and reinstate them on their former seniority districts with full rights and seniority unimpaired. The D&H yard work at Buffalo is not disappearing, it is simply being transferred to NS's Bison Yard and given to NS employees as a windfall benefit of this transaction, while the interchange work is being given to Canadian CPR employees working for lower wages than the D&H/CPR who are doing the work now. D&H employees should be able to follow the work back to NS. (Conrail)

15. The Board should also be aware that in order to continue to interchange trains from Canada with NS at Bison Yard, it would be necessary for CPR to acquire and utilize D&H's trackage rights in the Buffalo Gateway. For a number of years CPR has claimed it had the right to operate into the Buffalo Gateway with its Canadian employees, because it had trackage rights separate and apart from D&H to do so. It is now apparent that CPR did not have those trackage rights, as, if it did, there would be no need to acquire them via this transaction. So, one must ask, on what legal basis is CPR operating today into the Buffalo Gateway, if it needs to acquire the D&H's trackage rights? CPR has been operating over the border masquerading as D&H, utilizing its lower paid Canadian employees in place of D&H employees and is now asking the STB to legitimize this sham so they can legally use Canadians in place of American workers in the USA.

16. For all of these reasons, D&H's petition should be denied.


M. D. Twombly – General Chairman

Dated: November 15, 2004